

**Water Pollution Control Advisory Council (WPCAC) Meeting
February 15, 2001 1:30 p.m. - 3:10 p.m.
Department of Environmental Quality (DEQ) Conference Room**

Attendees

Council Members

Richard Parks, Fishing Outfitters Assoc. of Montana
Mary Bryson, Dept. of Agriculture
Don Skarr, Dept of FW&P
Robert Willems, Conservation Districts
Don Halverson, United Assoc. of Plumbers
& Pipefitters
Roger Noble, Land and Water Consultants
Barbara Butler, Billings Solid Waste Division

Other Attendees

Art Compton, DEQ
Bob Raisch, DEQ
Bonnie Lovelace, DEQ
Chris Levine, DEQ
Greg Hallsten - DEQ

Approval of Minutes

The WPCAC meeting was called to order by Chairman Richard Parks at 1:40 p.m. The Council approved the minutes from the conference call on December 6, 2001.

Update on Coal Bed Methane (CBM) Issues

Bob Raisch stated that the review of CBM development is going down three paths. First, there is the environmental impact statement (EIS) being prepared by the Bureau of Land Management (BLM), DEQ and the Board of Oil and Gas. Secondly, DEQ is proceeding to develop total maximum daily loads (TMDLs) for the TMDL planning areas covered by the Tongue, Powder, and Little Powder Rivers. Thirdly, DEQ is working on an interim agreement with Wyoming concerning concentrations at the border that are acceptable as targets to be used as guide lines for permitting and other activities in Wyoming until TMDLs are developed.

EIS

Greg Hallsten informed the Council that the agencies completed six weeks of public scoping at the end of January. Public hearings were held in Billings, Broadus, Ashland, Miles City and Helena. The third party contractor who is doing the EIS is summarizing the scoping comments. Most people speaking out are opposed to CBM development. Their concerns include the quality and quantity of water being produced and the problem of groundwater draw down affecting other users. The contractor hired by BLM is ALL Consulting from Tulsa, OK. The big sub-contractor is CH 2 M Hill. The agencies are trying to push forward on a schedule to get the draft EIS out in September for a 90-day public review, followed by a final EIS toward the end of next winter or early spring.

Bob Raisch stated that Governor Martz recently designated the Board of Oil and Gas as a co-lead agency in regards to the state's participation on the EIS.

Mary Bryson stated that the material mailed to the Council says that the Environmental Protection Agency (EPA) has started a project that has a different completion date than the EIS. Why is this an issue with the EIS? Won't the EPA report be done before the EIS is drafted and sent out?

Bob Raisch replied that the EIS would be completed before the EPA project. The EPA project is scheduled for completion in September of 2001. It is a different project that's looking at alternatives to direct discharge of CBM water. It will look at Wyoming development and alternatives like reinjection, off stream storage and treatment. The study will focus on an economic and feasibility analysis of the alternatives. This is just one part of what the EIS will have to deal with. The timing of EPA's project is such that it will not be done in time to be incorporated into the EIS.

Richard Parks asked if EPA is just doing a study or are they going to implement a different discharge arrangement?

Bob Raisch explained that it is just a study at this point in time with no regulatory authority. They develop a lot of technology standards for different types of dischargers. The first step is to develop technical standards for this type of discharge that could lead to regulatory authority.

Chris Levine noted that the EPA project would still have to go through the 40 C.F.R. processes and wouldn't be accomplished in time to be incorporated completely into the EIS.

Bob Raisch added that the EPA project is scheduled for completion in late August of this year. The draft EIS should be completed around this time. The EPA will continue to have ongoing public notice of its study. The results of the EPA study may eventually be included into the final EIS but it does appear that the EPA study will not be done in time to make the draft EIS.

Richard Parks observed that since EPA is studying what to do with CBM water they are generating information on how to evaluate different discharge scenarios. These scenarios look at it from both the producer's side on how to evaluate costs of different methods and the water user's side to see what the advantages to the ground and surface water regimes are with these different methods. This information will help regulatory agencies determine what kind of conditions should be put on permits. Why do we push the EIS through ahead of the development of information that would be useful to all parties and to development down the road? This information could prove to be critical in terms of project design. For instance: as a result of the EIS, there will be permits issued to drill wells. The information generated as a result of the EPA study pertains to and should be incorporated into the EIS because it would be important for all parties involved to know this information before they started any project. The EIS process should be slowed down to have all possible information available for the development of any given project. Our aim is a programmatic EIS that individual well permits would be conditioned by.

Greg Hallsten discussed several reasons for keeping to the tight time frame for the EIS. DEQ is up against a lawsuit that requires the state to produce this programmatic EIS. BLM is also up against requirements to update their oil and gas resource management plan to include CBM because we have a project underway right now. There is considerable interest from industry for additional projects. We need to be ahead as much as possible to respond to the demand for permits. There is already heavy development in Wyoming so we need to keep going to stay ahead of the demand for permits. Alternative methods of CBM water handling will be looked into because it is a major issue. Although a programmatic review is not detailed, it is designed to allow permitting for development to move forward, keeping in mind that anything that differs from the programmatic will have to be reviewed individually. Major projects will not slip through cracks due to speed.

TMDL

Bob Raisch stated that the state law directs DEQ to prioritize TMDLs by programmatic needs. The programmatic needs are in place for the TMDLs on the Tongue, Powder and Little Powder Rivers and have allowed them to be rescheduled for completion in 2001 and 2002. We have met with conservation districts and some other organizations to get things started. A plan and schedule is being prepared on how those TMDLs will be accomplished by 2002. We don't know what is going to happen with Wyoming during the two-year period until the TMDLs are completed. Wyoming plans on maintaining existing water quality at the border.

Chris Levine stated that DEQ attended a meeting in Sheridan, Wyoming. This new work group is known as the Montana Wyoming Technical Work Group. The topic of the meeting was to determine what a measurable change means and how do you measure that change. Other topics covered included identifying parameters of concern, and getting additional water quality data from CBM producers, Wyoming NPDES permit system and Montana DEQ old colstrip mining data. Looking at in-stream water quality, Wyoming described their monitoring system on the Powder and Little Powder Rivers. Montana is trying to get some funding to upgrade some older U.S. Geological Survey (USGS) stations to begin a similar program. We will share all the numbers from the two states to see which parameters we need to be concerned about and which ones will be coming from CBM. The next meeting will be March 8th. We will have some data from the CBM industry and permit and background CBM data from Helena. We should have an idea what a measurable change is and how to measure the change. The industry and the states of Montana and Wyoming will come to the next meeting with suggestions. The group will try to get something out for the policy makers and get a decision.

Don Skaar asked isn't deciding what a measurable difference is, the same as determining non-degradation on a discharge permit?

Chris Levine explained that no, it's not. In Montana our non-degradation limits are based on the standards, 15 percent of the standard for a toxin to maintain beneficial uses. Wyoming uses a different system. They take the base line, subtract it from the standard and call it assimilative capacity. Then they take 20 percent of that and add it to the base line. This leads to

another issue of what is base line for SAR, TDS, and other parameters. Montana's non-degradation process is easier than Wyoming's.

Don Skaar stated that he was thinking of just applying trigger values. They must have been thinking there is more measurable difference than a small increment above base line.

Chris Levine explained that they needed to decide if an analytical detection means a measurable change or the concept of being 80 percent certain that there was a measurable change.

Bob Raisch stated that the concept we are using with no measurable change might be more stringent than non-degradation. First we need to find out what the level is in the river at the border now. We don't have maximum, minimum or average concentrations at the border yet to determine what no measurable change would be.

Chris Levine stated that we are getting into monitoring. Wyoming has quite a few monitoring stations already in place. Montana is setting up a few of their own. The group will make sure that parameters are similar for both states. If there is a measurable change, it will be detected.

Richard Parks stated that lack of base line data might be a big problem in writing the EIS. If the EIS is not based on an accurate base line, then it's going to be hard to know what we are changing with any projects that are permitted under it.

Chris Levine stated that we have a good main-stem water quality data set on the Powder River and a smaller data set for Moorhead near the Wyoming border. USGS has done a lot of monitoring at the border over a long period of time since the 50s. That data set does exist but we need to continue to sample to maintain that data set. We are short of tributary information. With the development of TMDLs and additional monitoring that is necessary to establish TMDLs we are getting a handle on the water quality of tributaries.

Bob Raisch stated that when dealing with the parameters of concern, there may be parameters added to those currently being monitored. There is no monitoring at the border for the Little Powder River and that is a critical area in need of monitoring.

Chris Levine stated that there are stations at Weston, just inside Wyoming, and Broadus that do have some data collected by USGS when they were running them. We are looking at reactivating those stations. In the EIS the data that has been collected will be reviewed.

Richard Parks asked how far back does this period of not monitoring go?

Chris Levine answered that for the Little Powder and tributaries the data sets its at 5 -10 years. For the main-stem on the Powder the data is continuous from the early 50s to the present. For the Moorhead station; from the 50s and 60s on and off again until early to mid 90s. They have kept a steady flow of data for a few other things at the Moorhead station. The Tongue River has stations at the state line, below the dam, and at several other locations.

Legislative Items

Bob Raisch stated that Art Compton would be here to go over this information but he would get started with HB 125-temporary water quality standards. Bonnie Lovelace can speak about some of the water issues that are before the legislature.

HB 125 -Temporary Water Quality Standards

Bob Raisch stated that HB 125 went before the House Natural Resources Committee. They all supported the bill but had a lot of language changes. The sponsor has submitted three amendments to the bill that were passed by the Natural Resources Committee. First, the goals of temporary standards originally said "any additional beneficial use." It was changed to "goal to meet all beneficial uses to the extent considered achievable." Second, the applicant would have to submit an implementation plan and support document 90 days prior to submitting a petition for temporary standard rule making. It was changed to 60 days. Third, language was changed under the section relating to boards duty to review temporary standards every three years and "gauge progress towards meeting the standards." It has been changed to review it in the "context of progress toward meeting the goal to meet all beneficial uses to the extent considered achievable." The bill still has to go through the Senate. The second amendment was the most important because the department and others need sufficient time to review the proposed temporary standards prior to going to the board.

Richard Parks stated that the lead-time was less now.

Bob Raisch stated that the way the original language was written, they would have 180 days after petitioning the board to submit an implementation plan and support document. This could even be after the board adopted the standards, which was unworkable. The new amendment is clearly more acceptable. ASARCO was used as an example that led us to believe that there needed to be changes.

SB 319

Art Compton stated that SB 319 is a major facility-siting bill. SB 319 removed generation from the siting act except for geothermal resources. It increases the review threshold for pipelines from 17" to 25", therefore excluding the class of 24" pipelines. It increases the mileage threshold for covered pipelines from 30 miles to 50 miles. For a pipeline to be covered it would have to be greater than 25" in diameter and greater than 50 miles in length. It also excludes drinking water pipelines. Before only irrigation pipelines were excluded.

Richard Parks stated that he disagreed with the bill.

Art Compton stated that we worked hard on amendments trying to make the bill better. There are a few other siting act bills. A bill sponsored by Senator Toole from Helena is being

heard in the Senate Energy Committee this afternoon. It will tighten the review criteria for the siting act but is unlikely to pass. Senator Cole's bill, SB 319, will probably pass.

Montana Environmental Protection Act (MEPA) Bills

Art Compton stated that there are six MEPA bills. Five are in a package being backed by most members of the regulated community in the state. The first one is Representative Mood's bill, SB 459. It requires any alternative to the original project considered by an agency to be technically and economically feasible for that particular project sponsor. The applicant has to be able to afford the alternative or you don't have to look at in the EIS. It also limits the options that an agency can review in considering a project; limiting the scope of alternatives. It requires the agency to look at the positive and negative effects of not completing the project. It looks at economic benefits of the project from the prospective of public finance and employment. Second, Senator Grimes' bill, SB 377, limits the time frame under which an environmental review of a project can be completed to a maximum of one and a half years. A one-time extension can be granted for good cause. In most cases, after the extension is granted and if the project review is still not complete, then the agency must issue a permit. It limits consideration by the agency of future cumulative environmental impacts of a project unless those impacts can be proven. SB 377 limits the level of engineering detail an agency may require of a project sponsor. Third, Representative Younkin's bill, SB 473, clarifies that MEPA is a procedural law with no substantive effect. Also, an environmental analysis of a project under MEPA can not be used to deny or condition the approval of any permit unless another environmental law is violated. MEPA is considered substantive under the Hard Rock Act.

Bonnie Lovelace stated that it is the only Act that has been in the courts and been declared substantive.

Art Compton stated that the Sanitation and Subdivision Act is the one that has been in court and designated procedural.

Bonnie Lovelace stated that the only things you can look at during a review are the items authorized in the Sanitation Act. For example, looking at storm water, water and sewer.

Art Compton stated that the fourth bill, Senator McCarthy's, would require the agency director to endorse the determinations of significance. The fifth bill in the package is Representative Castin's bill, which prevents state agencies from including property already owned by a project sponsor in the MEPA fee calculation. The sixth bill not included in the package that is generally backed by industry but is a significant MEPA proposal. Senator Depratu's proposal exempts from environmental review certain activities involving state lands evaluated by DNRC. That is like a state timber sale.

Dan Sullivan asked under Senator McCarthy's bill, what is significant?

Richard Parks explained it makes the head of the department aware that there is a project and that someone is making a decision and he's the guy that has to sign off on the level of review it gets.

CBM Bills

Art Compton stated that there are some CBM bills. One of them, by Representative Bixby, requires a permit for any CBM discharge. It has not been brought up for executive action and I don't know if they are going to let it die in committee or not. There are a couple of bills that came up in the legislative staff meeting this morning. A bill that raids one of the remediation accounts, the orphan shares account; it's a type of impaired land's remediation account. It would raid the account for some CBM mitigation. Another bill authorizes the Board of Oil and Gas to issue additional CBM drilling permits. There is a Senate Joint Resolution that directs the Environmental Quality Council (EQC) to provide oversight over DEQ and the Board of Oil and Gas for the production of the EIS. It requires the staff that is managing the EIS effort (DEQ and the Board of Oil and Gas) to regularly report to the EQC and describe the progress of the EIS. The purpose of the bill is to insure that the EIS is completed in a timely and cost-effective manner.

Water Quality Act (WQA) Bills

Bonnie Lovelace stated that she would like to discuss WQA bills. There are no big ones out there. There are several minor ones that affect things that may interest you. HB 310, CBM discharges requiring permits, went to hearing on the 2nd. There has been no executive action and it may die. We have determined that we would have to issue permits anyway. The other one having to do with specific operations, HB 335 deals with concentrated animal feeding operations. HB 335 had to do with adding a public notice process for every operation that was authorized under a general permit. That one was tabled and we will know in a week if it's dead. HB 513 is a bill that is related to subdivisions, but under the WQA. It goes into the non-degradation provisions and the outstanding resource water provision of the WQA. The title is to eliminate nitrate testing for single family subdivisions on one-acre lots or larger. It deals with the portion of the WQA where we do the non-degradation review and adds an exemption. You don't do non-degradation reviews for nitrates on single family dwellings with individual septic systems on one-acre lots or larger. It also states that the department can not consider a petition for outstanding resource waters for nitrate issues. It is up for hearing tomorrow in House Natural Resources. The other WQA bill is SB 379, which addresses issues under the general permit and how we permit storm water construction permits. This bill matches our process to the EPA process. It requires DEQ to use a notice of intent process. We'll get the plans but we won't do an up front review on them. We will have the ability to look at the plan and use the information in it for inspection or enforcement purposes. They won't have to wait for us to send the authorization letter. That bill has gone to hearing and has been up for executive action. I don't know if it passed because the computers were down.

Sanitation Bills

Bonnie Lovelace stated that SB 167 changes the relationship between the state and the counties. It specifies what the counties can review for us with our Department retaining final authority for subdivisions. SB 167 allows counties to review major subdivisions if they are

certified under a certification program. There is a lot of cleaning up to do in the bill. Currently, percolation tests are the only tests used to determine the size of drain fields. We are also adding other kinds of soil testing. The bill has been transmitted from the Senate to the House.

Roger Noble asked if the counties take over all the subdivision review and non-degradation, what is DEQ's role in it?

Bonnie Lovelace explained that not all the counties are going to do it. We have a contract arrangement with those counties wishing to be certified. In the arrangement, they determine what kinds of systems they feel qualified to do and what we feel they are qualified to do. Most counties that take on review under the contract do standard conventional septic systems. Not all of them are trained or feel comfortable reviewing sand filters, aerobic treatment plants or other kinds of systems. It's going to take time before all the counties that want to do it are doing everything. Some counties want to do larger systems. HB 585 has a lot of the clean up items and definition changes that the Department and others wrote into SB 167. It is different than SB 167 because the relationship between the state and the counties is significantly different. In HB 585 counties are either certified and it's all theirs or all DEQ. It also severs the financial relationship because we get all the fees unless they have their own fees. Currently, DEQ reimburses the counties for certain fees depending on what they review. If the bill passes, the county gets the fees or DEQ does. If the bill passes then those counties that are certified have to decide if they want to stay certified or not. The counties need to decide if they want to do it all or allow DEQ to do it all. I don't see a scheduled hearing yet and have no idea what committee it will be in due to the fact the system is down.

Barb Butler asked if we know when the system will be up?

Bonnie Lovelace explained that they do not know when the system will be up and they are beginning to panic.

Miscellaneous Briefing Items

Bob Raisch stated that, regarding Lewis Keim's resignation, we did solicit applicants for that position from 30 different groups. We got three applicants that sent in their names for the position and they were: John Wilson from Trout Unlimited in Helena, Virgil Binkley of the Broadwater Rod & Gun Club in Townsend, and Trapper Badovinac with Fishing Outfitters Association of Montana. A package was sent over to the governor and she will make an appointment in a few days. Although the council would have liked an applicant from eastern Montana, none applied. The Board of Environmental Review finalizes their minutes at their next meeting. I will try to submit the final minutes from the latest board meeting that has final minutes, which will probably be from two meetings back.

Richard Parks stated that after a rule making discussion it would be nice to see what has happened regardless if it is from two meetings back.

Bob Raisch stated that we would also try to update you orally on what the board did before the final minutes are available.

TMDL Lawsuit

Bob Raisch stated that the DEQ would not appeal the TMDL lawsuit but EPA may still appeal the lawsuit. The lawsuit resulted in a court order that came out of the federal district court in Missoula issued by Judge Molloy. It deals with the TMDL process, the list and permitting of discharges on impaired waters. DEQ would rather spend our time getting TMDLs done and not preparing a legal case. In the short run, it doesn't make a difference whether we get a favorable decision or not. But in the long run, after two years a favorable decision would allow us to stagger some of those reassessed waters farther out into the future and give us more time to complete them. It's not going to make much difference in the first two years. With the judges latest clarification we think there is enough flexibility to allow us to permit new discharges and existing source under special circumstances.

Bonnie Lovelace stated that if we have a new or increased discharge application and it is a stream on the 1996 impaired list, the first thing we look at is what is it impaired for and is that a constituent in the discharge. If it isn't, then there is no issue. There was a concern with existing permits that have a discharge limit at a certain level but the source is discharging below that level. If we didn't lower the limits to what they were actually discharging then we might have a problem. We spent some time with EPA on this issue and looking at the actual language that the judge put into his order. We reviewed how he addressed that kind of question and how he fit that into his claim that we were overreacting. With the renewals of those permits we do the first test to see if there is something that needs a TMDL even for those that already exist. With each new permit we look at the flow conditions and the monitoring data for the recent years. With all things equal, we agreed with the EPA, that because all our analyses have taken into account the design, we could leave those effluent limits in place but not allow them to be any larger. As long as they are still in the limits of their permit, then there will be no problem. All of our permits on impaired drainages have a re-opener clause in them for changing those limits if necessary when the watershed or water body TMDL is completed. We submit a request for approval to the EPA with each point source permit that is water quality based, whether or not it is on an impaired drainage. We take the permit's concentration limits and convert them to a load and then submit that to the EPA for their approval. The court order said it is up to the EPA to determine what is a necessary TMDL before a permit can be issued, so we do the calculations just for the point discharge. The total count of actual TMDLs approved by the EPA is over 200 since 1997. We are meeting the court order and assisting the TMDL group. At some point, we are going to have to say no to somebody because we won't be able to meet the court order.

Roger Noble asked if it is an impaired water body and the discharger is not discharging one of those constituents for which the impairment is based, than they are not at all restricted?

Bonnie Lovelace answered that is correct. DEQ would still calculate a TMDL for a water-based permit. There are two kinds of TMDLs, one is if it is impaired because of a constituent and the other is to keep it from being impaired.

Barb Butler asked if Bonnie could make a general announcement about the public notice and public hearing on the general permit for the storm water discharges?

Bonnie Lovelace stated that there is a five-year renewal schedule with changes to the general permit for industrial stormwater discharges out for comment right now. It's up on DEQ's web site.

Barb Butler stated that the public hearing is February 28 and the record is open until March 9th for comments.

303(d) List

Bob Raisch stated that the EPA has approved the 2000 303(d) list. There is one contingency. Their approval is contingent on consultation with the Fish & Wildlife Service in regards to the Endangered Species Act. The list may require some changes. We would be working off the 2000 list if it weren't for the federal court decision in Missoula. Those waters that were removed between 1996 and 2000 were removed due to insufficient data to make a determination as to if they were impaired. Those waters are going to have to be reassessed quickly. Especially in those planning areas where we have TMDLs scheduled for development in 2001 and 2002. If they are not impaired the judge's order does not require us to do a TMDL.

Richard Parks stated that he would like to see the 2000 list.

Bob stated that it's on the webpage.

Richard Parks asked if there were any more questions about anything yet?

Bob Willems stated that he would like to congratulate Jan Sensibaugh on her appointment and wish her well. I feel the meeting went well.

Bob Raisch commented that at the next meeting he would ask Jan Sensibaugh to introduce herself and provide an overview on where she sees the department going. I may have to wait until the legislature slows down.

Richard Parks adjourned the meeting at 3:10 p.m.